Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-559

DIVISION 241, AMALGAMATED TRANSIT UNION (AFL-CIO),

Petitioner,

vs.

LAWRENCE SUSCY, DONALD WALSH, JAMES R. QUINN, WALLACE D. JOHNSON, ERNIE BANKS, JAMES BLAA, JOHN DOE AND RICHARD ROE, INDIVIDUALLY AND AS OFFICERS AND REPRESENTATIVES OF THE CHICAGO TRANSIT AUTHORITY, A MUNICIPAL CORPORATION,

Respondents.

MEMORANDUM FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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The decision of the Court of Appeals in this cause is consistent with all of this Court's rulings regarding the constitutional rights of municipal employees. The decision below does not conflict with any federal or state court decision regarding the rights of municipal employees.

Petitioner asks this Court to grant a writ of certiorari because the decision below is contrary to the Illinois breathalyzer statute[1] and contrary to this Court's decision in *Schmerber* v. *California*, 384 U. S. 757 (1966).

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1. Ill. Rev. Stat. (1975) Ch. 95½, par. 11-501 and 11-501.1.

The Illinois breathalyzer statute does not purport to restrict the power of the Chicago Transit Authority ("CTA") to enact ordinances and work rules relating to the fitness of its operating employees and the safety of its employees, passengers and the public.[2] The Illinois statute provides a rule of evidence for criminal prosecutions of drunk driving and defines the permissible uses of breathalyzer test results obtained under its implied consent provisions. It also provides for revocation or suspension of a driver's license under certain circumstances.

The CTA Rules requiring operating employees to submit to physical examination, including a blood test and urinalysis, do not purport to authorize any criminal sanctions or affect an employee's driver's license. Petitioner does not, and can not contend that Respondents have used the results of blood tests and urinalyses except for the limited purpose of determining an individual's ability to operate mass transit equipment in a safe manner.

The CTA Rules are not aimed only at discovering alcohol abuse. The tests are also justified by the need to detect drug abuse and physical ailments, such as untreated diabetes, which can affect a person's ability to operate mass transit equipment safely. As both the District Court and Court of Appeals found, the public interest requires that the CTA detect and discipline employees who are unfit to operate a bus or rapid transit train.

Petitioner's claim under the breathalyzer statute is not supported by logic or common sense. At best, petitioner raises nothing more than a question of statutory interpretation under Illinois civil law—while citing only a criminal case which turned upon an evidentiary issue and is of no relevance.[3] Section 1983[4] does not afford a vehicle whereby federal courts may adjudicate all claims for violation of a state statute by public officials. Petitioner's claim under the breathalyzer statute pre-

2. Ill. Rev. Stat. (1975) Ch. 111⅔, par. 330-31.
3. *People* v. *Todd,* 59 Ill. 2d 534, 322 N. E. 2d 447 (1975).
4. Title 42, U. S. Code § 1983.

sents no substantial federal question and affords no basis for this Court to grant certiorari.

Petitioner also contends that the Court of Appeals' decision conflicts with the decision of this Court in *Schmerber* v. *California,* 384 U. S. 757 (1966). That is plainly not true. The Court of Appeals held that the probable cause requirement of *Schmerber* was satisfied. In support of its holding, the court found that the tests were given only under certain well-defined circumstances and only upon authorization by two supervisory employees.[5] Under these conditions, in the light of the "valid public interest" which justifies the intrusion contemplated, the court held that the probable cause requirement was satisfied.

The opinion of the Court of Appeals in this cause demonstrates that the CTA Rules do not violate the requirements of *Schmerber* v. *California, supra.* The opinion also shows close adherence to the decisions of this Court involving the rights of public employees. *Kelley* v. *Johnson,* ..... U. S. ....., 47 L. Ed. 2d 708 (1976); *Uniformed Sanitation Men Ass'n.* v. *Comm'r.,* 392 U. S. 280 (1968).

In January, 1975, the Illinois Transportation Study Commission ("ITSC") made a number of recommendations regarding improvement of CTA operations. *Ill. Transp. Study Comm'n., Investigation of Five Accidents Involving the Rapid Transit System of the Chicago Transit Authority* (January, 1975). These recommendations were based upon a study of CTA rapid transit operations by an independent consulting firm, public hearings, on-site inspections and reports of other governmental agencies and the CTA itself. As one of the "minimal elements" of a comprehensive CTA program regarding drug and alcohol abuse, the ITSC recommended that the CTA establish procedures to determine conclusively the involvement of drugs or alcohol in any serious accidents involving injuries. A second "minimal element" was a procedure to confirm or disprove

5. The Court of Appeals clearly based this finding upon Answers to Interrogatories filed by Respondents in the District Court.

suspicions of supervisory personnel regarding alcohol or drug abuse.

Alcohol or drug problems among CTA operating employees are not a fancied concern. In order to protect public safety and maintain public confidence in mass transit, these operating employees must be identified and separated from operating responsibilities, if not discharged. The CTA Rules under challenge are clearly a reasonable means of accomplishing this purpose. They allow no search or intrusion which is not directly and narrowly related to the ability of operating employees to drive safely. For these reasons and based upon the authorities cited above, respondents respectfully contend that the CTA Rules do not authorize any unreasonable search under the Fourth Amendment.

We respectfully submit that the Petition for Certiorari should be denied.

Respectfully submitted,

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